IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11471 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAVJIBHAI G. CHAUHAN

Appearance:

1. Special Civil Application No. 11471 of 2000

MR HARDIK C RAWAL for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/10/2001

ORAL JUDGEMENT

#. Since the matter has been admitted, with the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner Corporation has challenged the award passed by the Labour Court, Ahmedabad in Reference (LCA) No.1887 of 1998. The respondent workman herein had raised the aforesaid industrial dispute challenging his removal order. The respondent workman was serving as Driver in the S.T.Corporation and he was subjected to the chargesheet on the ground that, he remained absent unauthorisedly from 9.10.1995 to 11.1.1996. After conclusion of the inquiry, he was removed from service. The aforesaid order was subjected to the aforesaid reference. The concerned workman had challenged the action of the petitioner Corporation on the ground that since at the relevant time, his wife was sick, he could not remain present for the purpose of discharging his duties and that he had sent leave report along with the medical certificate. The Labour Court after allowing the parties to lead the evidence and after considering the evidence on record, came to the conclusion that the departmental inquiry was validly held. However, while exercising the powers under section 11-A of the Industrial Disputes Act, the Labour Court passed the order of reinstatement without back-wages. The aforesaid order is challenged by the petitioner - corporation by filing this petition.

#. At the time of hearing of this petition, it was argued by the learned advocate Mr.Raval appearing for the petitioner Corporation that, considering the past record of the respondent workman and considering the fact that, at the relevant time, even he did not bother to send leave report and this is not a case in which the concerned workman should be allowed to go scot free and some punishment was required to be imposed upon him. Mr.Raval has read the observations of the Labour Court made in paragraph 5 of the award. In paragraph 5, the Labour Court has observed that, in the facts and circumstances of the case, if two annual increments without future effect are withheld, it would be just and proper punishment. However, even though the aforesaid observations were made in paragraph 5 of the award suggesting the penalty, in the operative part of the award, the Labour Court has passed the order of reinstatement without back-wages. It was argued by Mr.Raval that, in view of the observations of the Labour Court regarding suggesting penalty of withholding of two annual increments without future effect, the Court should not have totally exonerated the concerned workman by not imposing any penalty.

#. Mr.Brahmbhatt has fairly conceded that, he has no

objection if the award of the Labour Court is modified to the effect that the concerned workman is subjected to the penalty of withholding of two increments with future effect.

#. After hearing both the sides and after considering the reasoning given by the Labour Court in paragraph 5, I am of the opinion that there seems to be obvious mistake in the operative part of the award as the Labour Court has already observed in paragraph 5 that the concerned workman should be subjected to the penalty of withholding of two increments without future effect. Mr.Raval, however, submitted that, the penalty of withholding of two increments without future effect will be inadequate punishment and it was the duty of the concerned workman to send necessary leave report in advance. By remaining absent unauthorisedly, the Corporation was put in great inconvenience and difficulties. He further argued that, at least some appropriate punishment is required to be imposed upon the concerned workman.

#. Therefore, considering the facts and circumstances of the case, I am of the opinion that the award of the Labour Court is required to be modified and the concerned workman is required to be subjected to the penalty of withholding of two increments with future effect. The award of the Labour Court is accordingly modified and the concerned workman will be subjected to the penalty of withholding of two increments with future effect. It is needless to say that the concerned workman will not be entitled to any back-wages for the intervening period and that part of the order of the Labour Court is confirmed.

#. It is clarified that the concerned workman will be entitled to his regular salary from the date of the award of the Labour Court and whatever amount is required to be paid to him on the basis of this order, the same may be paid to him within a period of one month from today. The petition is accordingly partly allowed. Rule is accordingly made absolute with no order as to costs.

(P.B.Majmudar,J)
(pathan)